

## **Commissioner's Directive #13**

**September 15, 1989**

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**Subject:        Claim for Refund Procedures**

### **Introduction**

This Directive sets forth the procedures which are to be followed by all taxpayers who file a claim for refund pursuant to IC 6-8.1-9-1 and outlines the proper manner in which the Indiana Department of Revenue will discharge its duties under the statute.

### **Authority**

IC 6-8.1-9-1 establishes both the rights and the remedies for a person who determines that more tax has been paid than is legally due. This section is in contrast to IC 6-8.1-9-2 wherein the Department finds that a person has paid more tax than is legally due.

IC 6-8.1-9-1(a) states the statutory period within which a claim for refund may be filed. The prerequisite for obtaining a refund is that the person must file the claim with the Department within three (3) years after the latter of the following:

- (1) the due date of the return;
- (2) the date of payment; or
- (3) in the case of a return filed for the state gross retail or use tax, ..., the end of the calendar year which contains the taxable period for which the return is filed.

IC 6-8.1-1-4 defines "due date" to include the last day of an extension period. If an extension of time is applicable for the tax period for which the overpayment is claimed, the taxpayer must provide the Department with information verifying the same.

If the Department determines that the claim for refund is barred by the statute of limitations, the person will receive an Order Denying Refund confirming the same.

IC 6-8.1-9-1(a) also mandates that the claim must set forth the amount of the refund claimed and the reasons that the person is entitled to the refund. Pursuant to promulgated regulation 45 IAC 15-9-2(d), the claim for refund must set forth:

- (2) a sufficiently detailed explanation of the basis of the claim such that the department may determine its correctness;
- (3) the tax period for which the overpayment is claimed; and
- (4) the year and date the overpayment was made.

The claim for refund shall be filed on a form prescribed by the Department.

IC 6-8.1-9-1(b) requires the Department to consider the claim for refund. In considering the claim, the Department may request any additional information which may be warranted in making a determination regarding the validity of the claimed overpayment. If the information requested is not provided and the Department is therefore without sufficient information to grant the refund, the claim will be denied. The person who has failed to provide the Department with the necessary requested information will receive a notice of the Department's decision pursuant to IC 6-8.1-9-1(b). Such notice will be in the form of an Order Denying Refund.

If the Department grants the claim for refund in full, a warrant for the payment of the claim is sufficient notice of the Department's decision pursuant to IC 6-8.1-9-1(b).

In the event the claim for refund is denied in part or in full, the person will receive an Order Denying Refund with an attached explanation stating the reason(s) for such denial pursuant to IC 6-8.1-9-1(b).

IC 6-8.1-9-1(b) allows a Hearing, at the discretion of the Department, on the claim for refund to be held for purposes of obtaining and considering additional evidence. The Department, however, will not initiate the Hearing process. The Department will conduct an informal Hearing only in the event a Hearing request is made at the same time the claim for refund is filed. For purposes of requesting a Hearing, the person must attach such request to the claim for refund form submitted to the Department.

If the Department decides to grant the claim for refund in full based upon information provided prior to a Hearing, a Hearing will not be conducted. A warrant for the payment of the claim is sufficient notice of the Department's decision pursuant to IC 6-8.1-9-1(b).

If a hearing was requested at the time the claim for refund was filed and the Department decides not to grant the claim in full, the person will be contacted by the Department for purposes of scheduling a Hearing, if the Department deems it worthwhile to hold a Hearing.

Once a Hearing date has been confirmed, failure to appear will result in a denial of that portion of the claim or the entire claim wherein the person has failed to otherwise provide sufficient evidence to verify the claimed overpayment. The person will receive an Order Denying Refund noting such failure to appear with an attached explanation of the Department's reason(s) for denial.

Subsequent to the Hearing, if the Department determines that the claim must be granted in full, a warrant for the payment of the claim is sufficient notice of the decision pursuant to IC 6-8.1-9-1(b).

If subsequent to the Hearing, the Department denies a portion of the claim or the entire claim, the person will receive an Order Denying Refund with an attached explanation stating the reason(s) for denial.

Any person in receipt of an Order Denying Refund has a statutory remedy for appeal with the Indiana tax court as provided under IC 6-8.1-9-1(c) which states:

- (c) If the person disagrees with any part of the department's decision, he may appeal the decision, regardless of whether or not he protested the tax payment or whether or not he has accepted a refund. The person must file the appeal with the tax court. The tax court does not have jurisdiction to hear a refund appeal suit, if:
- (1) the appeal is filed more than three (3) years after the date the claim for refund was filed with the department;
  - (2) the appeal is filed more than ninety (90) days after the date the department mails the decision of denial to the person; or
  - (3) the appeal is filed both before the decision is issued and before the one hundred eight first day after the date the person files the claim for refund with the department.

Each Order Denying Refund will be dated and such date will correspond with the date the Department mails the decision of denial to the person. The date will serve to begin the ninety (90) day period within which an appeal must be filed with the Indiana tax court.

If the person requests the Department to reconsider its Order Denying Refund, the Department in its discretion may grant additional consideration under extenuating circumstances. However, once an Order Denying Refund has been issued, any further consideration of the claim by the Department will not serve to toll the statute of limitations provided under IC 6-8.1-9-1(c). Therefore, even if the Department is reconsidering the claim for refund, a person must file an appeal with the tax court within ninety (90) days of the date on the Order Denying Refund to preserve the right of appeal.

Under IC 6-8.1-9-1(c), the sole remedy for an appeal of the Department's decision is with the tax court. In Marhoefer Packing Company, Inc., -v- Indiana Department of Revenue, 301 N.E. 2d 209 (Court of Appeals, Second District) (1973), the court stated the rule:

...where the Legislature creates a right and prescribes a remedy or method whereby the right may be enforced, the statutory remedy is exclusive. Id. at 213.

The court in Marhoefer cited In Re Blatt (1937), 41 N.M. 269, 67 P. 2d 293:

The rule is well settled in this country that whenever a statute grants a right which did not exist at common law, and prescribes the time within which the right must be exercised, the limitation thus imposed does not affect the remedy merely, but is of the essence of the right itself, and one who seeks to enforce such right must show affirmatively that he has brought his action within the time fixed by the statute; and if he fails in this regard he fails to disclose any right to relief under the statute. (Emphasis added.) Id. at 298-299.

The Court of Appeals of Indiana elaborated further on this rule in the decision of Matter of Estate of Compton (1980) 406 N.E. 2d 365, 372:

...the filing of a petition for refund and appealing the same to the court within the time fixed by the statutes, is jurisdictional – a precondition to or the essence of the right itself – and after the passage of the time allotted by statute the right itself is lost, the court does not have jurisdiction to hear it, and jurisdiction cannot be conferred, even by agreement. (Emphasis added.)

In light of the above decisions, it is quite clear that the Department and a taxpayer cannot confer jurisdiction on the court under these circumstances, not even by agreement. Therefore, if a taxpayer wishes to preserve the right of appeal, the taxpayer must comply with the time limits imposed by statute.

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Commissioner